

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CARLOS ZELAYA, et al.,

Plaintiffs,

- against -

MADISON SQUARE GARDEN, L.P., et al.,

Defendants.

Docket No. 08-CV-2933 (LMM) (AJP)

**DECLARATION OF TERRENCE
SMITH IN SUPPORT OF
PLAINTIFF'S MOTION TO FILE AND
SERVE A SECOND AMENDED
COMPLAINT**

ECF CASE

Terrence Smith declares under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am an attorney admitted to practice before this Court. I am a lawyer with the firm of Davis Saperstein & Salomon, P.C., attorneys for plaintiff Carlos Zelaya. I am fully familiar with the facts set forth herein.

2. I submit this Declaration in support of Plaintiff's motion to file and serve a Second Amended Complaint substituting Carlos Zelaya, Administrator Ad Prosequendum of the Estate of Ruth Zelaya in place of Ruth Zelaya, and adding a cause of action for survivorship on behalf of the Estate of Ruth Zelaya.

3. Ruth Zelaya died on March 24, 2010; I have attached a true copy of her death certificate as Exhibit 1.

4. The Hudson County, New Jersey Surrogate appointing Carlos Zelaya as the Administrator Ad Prosequendum of the Estate of Ruth Zelaya on I have attached a true copy of the Letter Testamentary of as Exhibit 2.

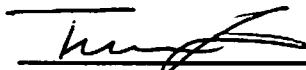
5. I have attached a proposed form of Second amended Complaint substituting Carlos Zelaya, Administrator Ad Prosequendum of the Estate of Ruth Zelaya in place of ruth Zelaya, and to add a cause of action for survivorship on behalf of the Estate of Ruth Zelaya as Exhibit 3.

6. I have attached a true copy fo the Court's letter of May ,2010 instructing Plaintiff to submit a motion to file and serve a Second amended Complaint as Exhibit 4.

Dated: Teaneck, New Jersey

June 15, 2010

DAVIS, SAPERSTEIN & SALOMON, P.C.



Terrence Smith [8297]
Davis, Saperstein & Salomon, P.C.
375 Cedar Lane
Teaneck, New Jersey 07666
(201) 907-5000

-or-

44 Wall Street, 18th Floor
New York, NY 10005
(212) 608-1917
Attorneys for Plaintiff Carlos Zelaya

EXHIBIT 1

Joseph A Komosinski, State Reg
Bureau of Vital Statistics

This is to certify that the above is correctly copied from a record on file in my office. Certified copy not valid unless the raised Great Seal of the State of New Jersey or the seal of the issuing municipality or county, is affixed hereon.

State Department of Health and Senior Services, Bureau of Vital Statistics and Registration

ISSUED BY:

DATE ISSUED: March 26, 2010

Full Name RUTH ZELAYA		Legal Name of Decedent (First Middle Last Suffix) RUTH ZELAYA	
Sex Female		3. Social Security No. 1-00-000000	
4a. Age 40 Years		4b. Date of Birth (MM/DD/YYYY) 1/10/1968	
7b. Country Mexico		7c. Municipality/City Toluca	
7d. Zip Code 50100		7e. Apt. No. 0000	
8c. Was Service Dates From/To? Yes		8d. Date of Service (MM/DD/YYYY) 1/10/1968	
9. Name of Informant Ruth Zelaya		10. Name of Surviving Spouse/Partner (Name given at birth or on both certificates) Carlos Zelaya	
11. Father's Name (First Middle Last) William Pardo		12. Mother's Name (First Middle Last) Maria Pardo	
13. Name of Informant Ruth Zelaya		14. Name of Informant Ruth Zelaya	
15. Place of Burial (Name of cemetery, crematory, other) San Pedro de San Jose		16. Location - City & State/Foreign Country San Pedro de San Jose, MO	
17. Name and Complete Address of Funeral Facility Rites Funeral Home, 3005 Kennedy Blvd, Jersey City, NJ 07310		18. Place of Disposition (Name of cemetery, crematory, other) San Pedro de San Jose	
19. NJ License Number 23J-P00044303		20. Decedent's Signature Ruth Zelaya	
21. Decedent of Hispanic Origin? Other Hispanic, Honduran		22. Decedent Race Other Race: Honduran	
23. Name and Address of Last Employer Home		24. Kind of Business/Industry Home	
25. Date Pronounced Dead (MM/DD/YYYY) 02/24/2010		26. Name of Person Pronouncing Death Charles Prestigiacomo	
27. Time Pronounced Dead (24-hr) 13:44:00		28. Date Signed (MM/DD/YYYY) 02/24/2010	
29. Type of Death (24-hr) 0916		30. Was Medical Examiner Contacted? No	
31. Date of Death (MM/DD/YYYY) 02/24/2010		32. Time of Death (24-hr) 0916	
33. Name (If not assistant, give street and number) 0916		34. Place of Death 0916	
35. Cause of Death 36a. PART I - IMMEDIATE CAUSE - (and disease or condition resulting in death, subsequently by conditions, if any, leading to this cause listed on Line a. Error may UNDERLYING CAUSE (disease or injury that preceded the events resulting in death) (LAST)		36b. PART II - Error or significant conditions contributing to death but not resulting in death 37. Was an Autopsy Performed? No	
37. Was an Autopsy Performed? No		38. Were Autopsy Findings Available to Coroner's Cause of Death? No	
39. Cause of Death 40. Time of Injury (24-hr) 41. Place of Injury (24-hr) (e.g. home, construction site, restaurant) 42. Injury at work? 43. Date 44. City		45. If Female, Pregnancy Status Not pregnant within the past year	
46. Date of Death 47. D-04 Decedent Have 48. Did Decedent Use 49. If Female, Pregnancy Status		50. Name, Address, and Zip Code of Coroner Charles Joseph Prestigiacomo, M.D. 50 Bergen Street Suite 6100, Newark, NJ 07102	
51. Coroner's Signature and Certificate Charles Joseph Prestigiacomo, M.D. 50 Bergen Street Suite 6100, Newark, NJ 07102		52. Date Received 02/24/2010	
53. District No. 0023		54. Date Received 02/24/2010	
55. License Number 23AA07481000		56. Date of Birth (MM/DD/YYYY) 02/24/2010	

Record
Contains
Amendment

Methods:

Ruth Zelazo

03/24/2010

line of Death City,
0916

CERTIFICATE OF DEATH

NEW JERSEY DEPARTMENT OF HEALTH AND SENIOR SERVICES

STATE FILE NUMBER

80003779597

STAYING ON TOP OF THE CURVE

EXHIBIT 2

**SURROGATE'S COURT OF HUDSON COUNTY
DONALD W. DE LEO, SURROGATE**

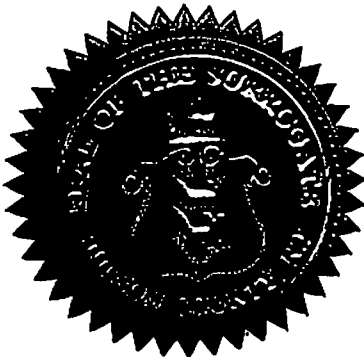
Docket No. 296549

I, *Donald W. De Leo*, Surrogate of the County of Hudson, State of New Jersey, do certify that on MAY 13, 2010, Administration Ad Prosequendum of RUTH ZELAYA, a/k/a RUTH NOHEMI POSAS PINEDA DE ZELAYA, who died intestate, late of the County of Hudson and State of New Jersey, was granted by me to CARLOS ZELAYA, of the County of Hudson, who is duly authorized to bring an action, institute a proceeding or make a claim in his name as such administrator ad prosequendum as provided under the law.

This grant of letters, however, DOES NOT AUTHORIZE the said administrator to receive any moneys in settlement, or satisfaction, of any judgment obtained in any such action or proceeding brought or instituted, or any part thereof.

Payment shall be made only to a general administrator, according to the applicable statute.

Witness my hand and seal of Office this 13th day
of MAY, in the Year of our Lord, TWO
THOUSAND TEN





Donald W. De Leo, Surrogate

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

CARLOS ZELAYA, AND CARLOS ZELAYA AS
ADMINISTRATOR AD PROSEQUENDUM OF THE
ESTATES OF RUTH ZELAYA AND OF JOSE :
CARLO ZELAYA

Civil Action

Plaintiff

: Case No. 08CV2933

vs.

:

MADISON SQUARE GARDEN, L.P.,
247 W. 37TH STREET LLC LLC I/S/H/A STITCH
BAR & LOUNGE INC., AND KEVIN FREIBOTT

: SECOND AMENDED COMPLAINT

:

Defendants

:

:

Plaintiff CARLOS ZELAYA, and CARLOS ZELAYA, Administrator Ad Prosequendum
of the Estates of RUTH ZELAYA and JOSE CARLO ZELAYA, by and through their Attorneys
Davis, Saperstein & Salomon, P.C., by way of Amended Complaint say:

PARTIES

1. Plaintiff Carlos Zelaya is a natural person and citizen of the foreign state of Honduras.
2. The decedent Ruth Zelaya was a natural person and citizen of the foreign state of Honduras and spouse of Carlos Zelaya.
3. The decedent Jose Carlo Zelaya, was a natural person and citizen of the foreign state of Honduras and son of Carlos and Ruth Zelaya.
4. On or about February 13, 2008, the Surrogate Court of the State of New Jersey, appointed Carlos Zelaya administrator of the Estate of Jose Carlo Zelaya, deceased, and hereinafter shall serve as the Administrator Ad Prosequendum of the Estate of Jose Carlo Zelaya, deceased.
5. On or about March 13, 2008, the Surrogate Court of the State of New Jersey appointed Carlos Zelaya as guardian over Ruth Zelaya, and on May 13, 2010, appointed Carlos Zelaya as the Administrator Ad Prosequendum of the Estate of Ruth Zelaya.
6. Defendant Madison Square Garden, L.P. (hereinafter "MSG") is a limited partnership formed in Delaware with its principal place of business at 4 Pennsylvania Plaza, New York, New

York, and is a wholly owned subsidiary of Cablevision.

7. Madison Square Garden is the owner and operator of the sports and entertainment arena commonly known as Madison Square Garden (hereinafter "The Garden") located at 7th Avenue between 31st St. & 33rd St., New York, New York.

8. Defendant 247 W. 37th Street LLC LLC i/s/h/a Stitch Bar & Lounge Inc. (hereinafter 247 W. 37th Street LLC) is a New York corporation with its principal place of business at 247 W. 37th St., New York, New York.

9. 247 W. 37th Street LLC owns and operates a food and drink establishment located at 247 W. 37th St., New York, New York commonly known at Stitch Bar & Lounge.

10. Defendant Kevin Freibott is a natural person and resident of the State of New Jersey. Mr. Freibott is in the custody of the Department of Corrections for the State of New Jersey.

JURISDICTION AND VENUE

11. Plaintiffs are all current or former citizens of the foreign state of Honduras whereas defendants are deemed citizens of the States of Delaware, New York and New Jersey.

12. The matter in controversy exceeds the sum of \$75,000.

13. The United States District Court thus possesses original jurisdiction over this matter by way of diversity of citizenship between the parties pursuant to 28 U.S.C. § 1332(a)(2).

14. Venue in this matter is properly laid in the United States District Court for the District of New York pursuant to 28 USC § 1391 because a substantial part of the underlying events took place in the City and State of New York.

BACKGROUND

15. At all times relevant to this matter, MSG was licensed to, and in fact, sold alcoholic beverages to patrons of sporting and entertainment events hosted at The Garden.

16. At all times relevant to this matter, 247 W. 37th Street LLC was licensed to, and in fact, sold alcoholic beverages to patrons of Stitch Bar & Lounge.

17. On or about January 23, 2007, The Garden hosted a college basketball game between the St. John's University and the University of Pittsburgh (hereinafter the "Basketball Game") which was sanctioned by the Big East Athletic Conference and the National Collegiate Athletic Association (hereinafter the "NCAA").

18. The tip-off time of the Basketball Game was scheduled for 7:30.

19. On or about January 23, 2007, and prior to the start of the Basketball Game, Kevin Freibott patronized Stitch Bar & Lounge.

20. While patronizing Stitch Bar & Lounge, Mr. Freibott was sold and consumed multiple alcoholic beverages and became visibly intoxicated.

21. Based on reasonable information and belief, Mr. Freibott was served alcoholic beverages at Stitch Bar & Lounge Inc., after he became visibly intoxicated.

22. After patronizing Stitch Bar & Lounge, Mr. Freibott attended the Basketball Game at The Garden.

23. While attending the Basketball Game at The Garden, Mr. Freibott was sold and consumed multiple alcoholic beverages from the concessions stand at The Garden.

24. Based on reasonable information and belief, Mr. Freibott was served alcoholic beverages at The Garden well after he became visibly intoxicated.

25. Based on reasonable information and belief, on the date in question MSG had failed to properly hire and properly train its servants, agents and/or employees, known or unknown, to

prevent serving alcoholic beverages to visibly intoxicated patrons, including Kevin Freibott, consistent with the legal requirements promulgated by the State and City of New York, regulations set forth the by the NCAA, and MSG's own posted rules, regulations and guidelines for serving alcoholic beverages during events hosted at The Garden.

26. Based on reasonable information and belief, on the date in question MSG had failed to assure that its servants, agents and/or employees, known or unknown, were complying with the applicable legal requirements promulgated by the State and City of New York, the regulations set forth the by the NCAA, and MSG's own posted rules, regulations and guidelines for serving alcoholic beverages during events hosted at The Garden.

27. Based on reasonable information and belief, on the date in question MSG authorized, condoned & permitted its servants, agents and/or employees, known or unknown, to serve alcoholic beverages to visibly intoxicated patrons, including Kevin Freibott, at events hosted at The Garden solely for economic gain.

28. Based on reasonable information and belief, MSG has repeatedly failed to prevent visibly intoxicated patrons from operating a motor vehicle including Kevin Freibott.

29. Near the conclusion of the Basketball Game, Mr. Freibott was further permitted to exit The Garden in a visibly intoxicated state despite the foreseeable harm to the public caused by the visibly intoxicated patron's operation of said vehicle including Kevin Freibott.

30. While operating his motor vehicle on the Pulaski Skyway (U.S. Route 1 &9) in Jersey City, New Jersey after departing from The Garden, and while still visibly intoxicated, Mr. Freibott struck the rear of the motor vehicle in which Carlos Zelaya, Ruth Zelaya and Jose Carlo Zelaya were traveling as passengers.

31. Jose Carlo Zelaya was killed as result of the collision caused by Mr. Freibott.

32. Ruth Zelaya was gravely injured as result of the collision caused by Mr. Freibott and died of her injuries and injury-related complications on March 24, 2010.

33. Carlos Zelaya was seriously injured as result of the collision caused by Mr. Freibott.

34. The official investigation of the collision concluded that Mr. Freibott was entirely at fault for the collision and that Mr. Freibott was operating his motor vehicle under the influence of alcohol in excess of three times the legal limit, which defines drunk driving in New York and New Jersey.

**COUNT I – MADISON SQUARE GARDEN
VIOLATION OF THE NEW YORK DRAM SHOP ACT, G.O.L § 11-101
AS TO CARLOS ZELAYA INDIVIDUALLY AND ESTATE OF RUTH ZELAYA**

35. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

36. On or about January 23, 2007, Kevin Freibott was attending the Basketball Game being held at The Garden.

37. While Mr. Freibott was attending the Basketball Game, in violation of the New York State Dram Shop Act, G.O.L § 11-101, MSG unlawfully sold alcoholic beverages to Mr. Freibott by serving Mr. Freibott in a visibly intoxicated state.

38. In further violation of the New York State Dram Shop Act, G.O.L § 11-101, MSG unlawfully sold alcoholic beverages to Kevin Freibott while having failed to properly hire, train and supervise its servants, agents and/or employees to in order to prevent serving alcoholic beverages to visibly intoxicated patrons, including Kevin Freibott, consistent with the legal requirements promulgated by the State and City of New York, regulations set forth the by the NCAA, and MSG's own posted rules, regulations and guidelines for serving alcoholic beverages

during events hosted at The Garden.

39. Having caused or contributed to Mr. Freibott's intoxication, MSG then permitted Mr. Freibott to exit The Garden and operate his motor vehicle while visibly intoxicated.

40. Upon exiting the Garden and operating his vehicle in a visibility intoxicated state possessing a blood alcohol level in excess of three times the legal limit, Mr. Freibott caused an auto collision on the Pulaski Skyway with another motor vehicle occupied by Carlos Zelaya, Ruth Zelaya & Jose Carlo Zelaya.

41. As a direct and proximate result of the auto collision caused by Mr. Freibott, Carlos Zelaya and Ruth Zelaya, were injured in and about their minds and bodies causing serious permanent personal injuries and emotional distress.

42. As a direct and proximate result of the auto collision caused by Mr. Freibott, Carlos Zelaya and Ruth Zelaya were caused great pain and suffering to their mind and body, and Carlos Zelaya continues to experience great pain and suffering in his mind and body.

43. As a direct and proximate result of the auto collision caused by Mr. Freibott, Carlos Zelaya and Ruth Zelaya were obliged to expend great sums of money for medical aid and attention.

44. As a direct and proximate result of the auto collision caused by Mr. Freibott, Carlos Zelaya and Ruth Zelaya were unable to attend to their usual pursuits and occupations and Carlos Zelaya will be unable to attend to his usual pursuits and occupation in the future.

45. On or about January 27, 2007, Jose Carlo Zelaya, died as a direct and proximate result of injuries sustained in the auto collision caused by Mr. Freibott.

46. Jose Carlo Zelaya, was survived by his parents, Carlos Zelaya and Ruth Zelaya.

47. As a direct and proximate result of the death of Jose Carlo Zelaya, Carlos and Ruth Zelaya have suffered severe and permanent injuries, damages and losses including but not limited to economic damages, pecuniary losses, lost and future wage loses, loss of support, and loss of prospective inheritance.

48. As a direct and proximate result of the death of Jose Carlo Zelaya, Carlos and Ruth Zelaya have been deprived of future aid, assistance, services, financial support.

49. As a direct and proximate result of the death of Jose Carlo Zelaya, Carlos and Ruth Zelaya have been caused to expend various sums to administer the estate Jose Carlo Zelaya and have incurred other expenses for which they are entitled to recover.

WHEREFORE Plaintiff demands judgment against MSG for their economic damages, compensatory damages, punitive damages, costs, fees and such other relief pursuant to The New York State Dram Shop Act, G.O.L § 11-101.

**COUNT II – MADISON SQUARE GARDEN
VIOLATION OF THE NEW YORK DRAM SHOP ACT, G.O.L § 11-101
AS TO CARLOS ZELAYA AS ADMINISTRATOR AD PROSEQUENDUM
OF THE ESTATE OF JOSE CARLO ZELAYA**

50. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

51. On or about January 23, 2007, Kevin Freibott was attending the Basketball Game being held at The Garden.

52. While Mr. Freibott was attending the Basketball Game, in violation of the New York State Dram Shop Act, G.O.L § 11-101, MSG unlawfully sold alcoholic beverages to Mr. Freibott by serving Mr. Freibott in a visibly intoxicated state.

53. In further violation of the New York State Dram Shop Act, G.O.L § 11-101, MSG unlawfully sold alcoholic beverages to Kevin Freibott while having failed to properly hire, train and supervise its servants, agents and/or employees to in order to prevent serving alcoholic beverages to visibly intoxicated patrons, including Kevin Freibott, consistent with the legal requirements promulgated by the State and City of New York, regulations set forth the by the NCAA, and MSG's own posted rules, regulations and guidelines for serving alcoholic beverages during events hosted at The Garden.

54. Having cause or contributed to Mr. Freibott's intoxication, MSG then permitting Mr. Freibott to exit The Garden and operate his motor vehicle while visibly intoxicated.

55. Upon exiting the Garden and operating his vehicle in a visibility intoxicated state possessing a blood alcohol level in excess of three times the legal limit, Mr. Freibott caused an auto collision on the Pulaski Skyway with another motor vehicle occupied by Carlos Zelaya, Ruth Zelaya & Jose Carlo Zelaya.

56. On or about January 27, 2007, Jose Carlo Zelaya, died as a direct and proximate result of injuries sustained in the auto collision caused by Mr. Freibott.

57. As a direct and proximate result of the auto collision caused by Mr. Frieblatt, Jose Carlo Zelaya was caused to suffer conscious pain and suffering and fear of impending death, was placed in apprehension of harmful and offensive bodily contact, suffered offensive and harmful bodily contact, suffered extreme fear, anxiety, emotional and psychological distress, loss of life's pleasures, loss of earnings and earning capacity, and was otherwise mentally and physically harmed.

58. Carlos Zelaya brings this claim on behalf of the decedent for the damages suffered

by Jose Carlo Zelaya.

WHEREFORE Plaintiff demands judgment against MSG for economic damages, compensatory damages, and punitive damages, costs, fees and such other relief as the New York State Dram Shop Act, G.O.L § 11-101 may allow.

**COUNT III – 247 W. 37TH STREET LLC LLC
VIOLATION OF THE NEW YORK DRAM SHOP ACT, G.O.L § 11-101
AS TO CARLOS ZELAYA AND ESTATE OF RUTH ZELAYA INDIVIDUALLY**

59. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

60. On or about January 23, 2007, Kevin Freibott patronized Stitch Bar & Lounge prior to attending the Basketball Game at the Garden.

61. While patronizing Stitch Bar & Lounge, in violation of the New York State Dram Shop Act, G.O.L § 11-101, 247 W. 37th Street LLC unlawfully sold alcoholic beverages to Mr. Freibott by serving Mr. Freibott in a visibly intoxicated state.

62. In further violation of the New York State Dram Shop Act, G.O.L § 11-101, 247 W. 37th Street LLC unlawfully sold alcoholic beverages to Kevin Freibott while having failed to properly hire, train and supervise its servants, agents and/or employees to in order to prevent serving alcoholic beverages to visibly intoxicated patrons, including Kevin Freibott, consistent with the legal requirements promulgated by the State and City of New York and its own posted rules, regulations and guidelines for serving alcoholic beverages.

63. Having caused or contributed to Mr. Freibott's intoxication, 247 W. 37th Street LLC then permitted Mr. Freibott to exit Stitch Bar & Lounge and operate his motor vehicle while visibly intoxicated.

64. Upon departing from Stitch Bar & Lounge and operating his vehicle in a visibility

intoxicated state possessing a blood alcohol level in excess of three times the legal limit, Mr. Freibott caused an auto collision on the Pulaski Skyway with another motor vehicle occupied by Carlos Zelaya, Ruth Zelaya & Jose Carlo Zelaya.

65. As a direct and proximate result of the auto collision caused by Mr. Freibott, Carlos Zelaya and Ruth Zelaya, were injured in and about their minds and bodies causing serious permanent personal injuries and emotional distress.

66. As a direct and proximate result of the auto collision caused by Mr. Freibott, Carlos Zelaya and Ruth Zelaya were caused great pain and suffering to their mind and body, and Carlos Zelaya continues to experience great pain and suffering in his mind and body.

67. As a direct and proximate result of the auto collision caused by Mr. Freibott, Carlos Zelaya and Ruth Zelaya were obliged to expend great sums of money for medical aid and attention.

68. As a direct and proximate result of the auto collision caused by Mr. Freibott, Carlos Zelaya and Ruth Zelaya were unable to attend to their usual pursuits and occupations, and Carlos Zelaya will be unable to attend to his usual pursuits and occupation in the future.

69. On or about January 27, 2007, Jose Carlo Zelaya, died as a direct and proximate result of injuries sustained in the auto collision caused by Mr. Freibott.

70. Jose Carlo Zelaya, was survived by his parents, Carlos Zelaya and Ruth Zelaya.

71. As a direct and proximate result of the death of Jose Carlo Zelaya, Carlos and Ruth Zelaya have suffered severe and permanent injuries, damages and losses including but not limited to economic damages, pecuniary losses, lost and future wage losses, loss of support, loss of

prospective inheritance.

72. As a direct and proximate result of the death of Jose Carlo Zelaya, Carlos and Ruth Zelaya have been deprived of future aid, assistance, services, financial support.

73. As a direct and proximate result of the death of Jose Carlo Zelaya, Carlos Zelaya has been caused to expend various sums to administer the estate Jose Carlo Zelaya and has incurred other expenses for which they are entitled to recover.

WHEREFORE Plaintiff demands judgment against 247 W. 37th Street LLC for their economic damages, compensatory damages, punitive damages, costs, fees and such other relief pursuant to The New York State Dram Shop Act, G.O.L § 11-101.

**COUNT IV – 247 W. 37th STREET LLC
VIOLATION OF THE NEW YORK DRAM SHOP ACT, G.O.L § 11-101
AS TO CARLOS ZELAYA AS ADMINISTRATOR AD PROSEQUENDUM
OF THE ESTATE OF JOSE CARLO ZELAYA**

74. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

75. On or about January 23, 2007, Kevin Freibott patronized Stitch Bar & Lounge prior to attending the Basketball Game at the Garden.

76. While patronizing Stitch Bar & Lounge, in violation of the New York State Dram Shop Act, G.O.L § 11-101, 247 W. 37th Street LLC unlawfully sold alcoholic beverages to Mr. Freibott by serving Mr. Freibott in a visibly intoxicated state.

77. In further violation of the New York State Dram Shop Act, G.O.L § 11-101, 247 W. 37th Street LLC unlawfully sold alcoholic beverages to Kevin Freibott while having failed to properly hire, train and supervise its servants, agents and/or employees to in order to prevent serving alcoholic beverages to visibly intoxicated patrons, including Kevin Freibott, consistent with the

legal requirements promulgated by the State and City of New York and its own posted rules, regulations and guidelines for serving alcoholic beverages.

78. Having caused or contributed to Mr. Freibott's intoxication, 247 W. 37th Street LLC then permitted Mr. Freibott to exit Stitch Bar & Lounge and operate his motor vehicle while visibly intoxicated.

79. Upon departing from Stitch Bar & Lounge and operating his vehicle in a visibility intoxicated state possessing a blood alcohol level in excess of three times the legal limit, Mr. Freibott caused an auto collision on the Pulaski Skyway with another motor vehicle occupied by Carlos Zelaya, Ruth Zelaya & Jose Carlo Zelaya.

80. On or about January 27, 2007, Jose Carlo Zelaya, died as a direct and proximate result of injuries sustained in the auto collision caused by Mr. Freibott.

81. As a direct and proximate result of the auto collision caused by Mr. Freibott, Jose Carlo Zelaya was caused to suffer conscious pain and suffering and fear of impending death, was placed in apprehension of harmful and offensive bodily contact, suffered offensive and harmful bodily contact, suffered extreme fear, anxiety, emotional and psychological distress, loss of life's pleasures, loss of earnings and earning capacity, and was otherwise mentally and physically harmed.

82. Carlos Zelaya brings this claim on behalf of the decedent for the damages suffered by Jose Carlo Zelaya.

WHEREFORE Plaintiff demands judgment against 247 W. 37th Street LLC for economic damages, compensatory damages, and punitive damages, costs, fees and such other relief as the New York State Dram Shop Act, G.O.L § 11-101 may allow.

**COUNT V – KEVIN FREIBOTT
NEGLIGENCE
AS TO ESTATE OF RUTH ZELAYA**

83. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

84. Kevin Freibott was the owner and operator of the motor vehicle registered and licensed in the State of New Jersey bearing the license plate No. NRX-63X.

85. Mr. Freibott as the operator of a motor vehicle has a legal duty to operate the vehicle in a reasonably safe manner.

86. Mr. Freibott as the operator of a motor vehicle further has a legal duty to operate the vehicle free of the influence of any drugs or alcohol.

87. On or about January 23, 2007, Mr. Freibott was operating his motor vehicle while visibly intoxicated with a blood alcohol level in excess of three times the legal limit.

88. While operating his motor vehicle in this condition under the influence of alcohol on the Pulaski Skyway, Mr. Freibott recklessly and/or negligently struck the rear of the motor vehicle in which Carlos Zelaya, Ruth Zelaya and Jose Carlo Zelaya were traveling as passengers.

89. As a direct and proximate result of Mr. Freibott's negligence, Ruth Zelaya was injured in the auto collision caused by Mr. Freibott on the Pulaski Skyway while he was operating his motor vehicle with a blood alcohol level in excess of three times the legal limit.

90. As a direct and proximate result of Mr. Freibott's negligence, Ruth Zelaya was injured in and about her mind and body causing serious permanent personal injuries and emotional distress.

91. Ruth Zelaya was caused great pain and suffering to her mind and body.

92. Ruth Zelaya was obliged to expend great sums of money for medical aid and attention.

93. Ruth Zelaya was unable to attend to her usual pursuits and occupations.

WHEREFORE Plaintiff demands judgment against Kevin Freibott for economic damages, compensatory damages, and punitive damages, costs, fees and such other relief as the law may allow.

COUNT VI-ALL DEFENDANTS FOR SURVIVORSHIP ACTION ON BEHALF OF THE ESTATE OF RUTH ZELAYA

94. Plaintiff repeats, reiterates and re-alleges the foregoing paragraphs as if set forth fully herein.

95. That by reason of the aforesaid, deceased plaintiff Ruth Zelaya was caused to sustain serious, severe grave, painful personal injuries resulting in her death and was caused to be rendered sick, sore, lame and disabled; was caused to suffer great pain and anguish, sustained a severe shock to her nervous system; all of the aforesaid injuries were attended with great pain, suffering, and discomfort prior to her death.

96. That by reason of the aforesaid, Plaintiff Decedent, Ruth Zelaya was caused to sustain severe and serious personal injuries prior to her death as defined by Section 5102(d) of the Insurance Law and/or greater than economic loss as defined in Section 5102(a) of the Insurance Law.

97. That by reason of the foregoing, the Estate of plaintiff decedent, Ruth Zelaya, has sustained damages that are compensable under New York E.P.T.L. §11-3.2, et seq. and the New Jersey Survivors, N.J.S.A. 2A:15-3, et seq.

WHEREFORE Plaintiff demands judgment against all defendants for economic damages, non-economic damages, compensatory damages, punitive damages, medical expenses, funeral expenses, costs, fees and interest, together with such other relief as the law may allow.

Dated: New York, New York
June 15, 2010

By:

Samuel L. Davis (SD1766)
DAVIS SAPERSTEIN & SALOMON, P.C.
110 E. 55th Street, 12th Floor
New York, NY 10022
Attorneys for Plaintiff

EXHIBIT 4

LAW OFFICES OF

DAVIS, SAPERSTEIN & SALOMON, P.C.

SAMUEL L. DAVIS •
 MARC C. SAPERSTEIN •
 GARRY R. SALOMON •
 STEVEN BENVENISTE •
 PAUL A. GARFIELD •
 --
 LUIS L. HAQUIA •
 TERENCE SMITH •
 STEVEN H. COHEN •
 PATRICIA Z. BOGUSLAWSKI •
 ADAM LEDERMAN •
 KRISTINA C. IVTINDZIOSKI •
 RAYMOND S. CARROLL •
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 (201) 907-5000

USDC SDNY

DOCUMENT

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 OF COUNSEL
 RACHAEL NASSO •

MEMO ENDORSED
 May 19, 2010

By Lawyer Service
 The Honorable Lawrence J. McKenna
 United State District Court
 Southern District of New York
 500 Pearl Street, Chambers 1640
 New York, NY 10007

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MAY 20 2010

LAWRENCE M. MCKENNA
 USDJ SDNY

RE: *Carlos Zelaya, et als v. Madison Square Garden, et als*
 Case No. 08-cv-2933

Dear Judge McKenna:

I am writing to request the court's permission to file the attached Second Amended Complaint in this matter. This pleading substitutes Carlos Zelaya, Administrator Ad Prosequendum of the Estate of Ruth Zelaya, for the decedent, Mrs. Zelaya, and adds a cause of action for damages pursuant to both New York and New Jersey Wrongful Death Acts.

The Defendant Madison Square Garden has entered an informal objection the the new cause of action. Filing of the Second Amended Complaint will presumably allow Defendant to file a formal motion.

Thank you for your consideration

Respectfully submitted,
 DAVIS, SAPERSTEIN & SALOMON, P.C.

Terrence Smith
 For the Firm

Cc: All counsel on attached list
 enclosure

*Plaintiff is to file a
 formal motion for
 leave to amend. So
 ordered.*

LM
 LSI 5/24/10